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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Austin Flake and Logan Flake,
Plaintiffs,
vs.
Joseph Michael Arpaio, et al.,
Defendants.

No. CV 15-01132-PHX-NVW

**PLAINTIFFS' MOTION
REGARDING DEFENDANTS' NON-
PRODUCTION OF DOCUMENTS**

For the very first time, during the trial cross-examination of former MCAO Prosecutor Shawn Steinberg on December 14, 2017, Plaintiffs learned that (1) MCSO Detective Marie Trombi had created a "large chart" spanning several feet in length regarding the criminal charges ultimately filed against Austin Flake and Logan Brown, and (2) Ms. Steinberg had created her own "graph" reflecting the extent of electrical usage at Logan Brown's parent's home for (all or part of) June 2014 based on records the MCSO subpoenaed from the Salt River Project.

Neither of these documents were produced or otherwise disclosed in pretrial discovery, although Plaintiffs' discovery requests clearly requested such documents. See attached Exhibits A-D.

The Court accordingly ordered the parties to "cooperate" regarding locating the "missing" documents (assuming that they have not been destroyed) and explaining why they were *not* produced by Defendants in the ordinary course of pretrial discovery.

1 In attempting to cooperate with Defendants' counsel regarding the missing
2 documents, Plaintiffs' counsel repeatedly asked Defendants' lead counsel, Jeffrey Leonard,
3 to answer the following questions:

- 4 • When did Defendants' counsel first learn of the possible
5 existence of the missing documents?
- 6 • Did Defendants' counsel withhold any documents based
7 on any purported privilege?

8 See attached Exhibit E. Notwithstanding the obvious importance of these two simple
9 questions, Defendants' counsel ignored the questions and refused to provide the requested
10 information to Plaintiffs.

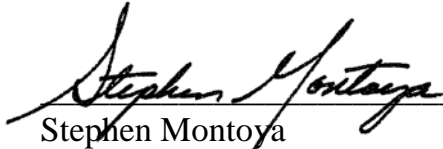
11 Of course, the question of when Defendants' counsel first learned of the possible
12 existence of the missing documents is a critical fact in ascertaining whether or not
13 Defendants' failure to produce the documents was accidental or intentional. See generally
14 Haeger v. Goodyear Tire & Rubber Co., 906 F. Supp. 2d 938, 941 (D. Ariz. 2012).
15 Correspondingly, the question of whether or not Defendants withheld any documents based
16 upon a claim of privilege is relevant to ascertain the actual extent of Defendants' failure to
17 produce information directly relevant to this dispute. (Plaintiffs note in this regard that—
18 notwithstanding Plaintiffs' specific request—Defendants failed to identify any document
19 being withheld on grounds of a purported privilege. See Exhibit A, p. 3, ¶ 6, and Exhibit
20 B, pp. 2-3, ¶¶ 1-4.)

21 In addition, of course, the fact that Defendants failed to produce the chart and graph
22 raises the possibility that other documents were also *not* produced.

23 Plaintiffs' two simple questions only seek basic, preliminary information regarding
24 the missing documents and could be easily answered with little or no expense to
25 Defendants. Accordingly, under the circumstances, the Court should order Defendants to
26 answer the questions no later than January 5, 2018 when it reports to the Court on its efforts
27 to locate the missing documents.
28

Respectfully submitted this 2nd day of January 2018.

MONTOYA, LUCERO & PASTOR, P.A.


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I hereby certify that on January 2, 2018, I electronically transmitted the foregoing document to the Clerk of Court using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following registrant:

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